

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7339 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge ?

Nos. 1 to 5 No.

Takhaji Somaji alias Bhalobhai Bhurabhai Damor

Vs.

The Commissioner of Police, Ahmedabad City & Others.

Appearance :

Mr.A.S.Dave for petitioner.

Mr.Neegam Shukla, APP for Respondents.

CORAM ; MR.JUSTICE M.R.CALLA

Date of decision : 08/10/96

ORAL JUDGMENT

This Special Civil Application is directed against the detention order dated 30.3.1996 passed by the Police Commissioner, Ahmedabad City detaining the petitioner under the Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 30.3.1996 itself and since then the petitioner is under detention at Rajkot Jail, Rajkot.

This Special Civil Application was filed on 26.9.1996 and on 27.9.1996 Rule returnable within two

weeks was issued and as usual no reply affidavit of the Detaining Authority has been filed on behalf of the respondents.

The grounds of detention enclosed with the detention order show that 9 cases under Prohibition Act during the year 1994-95-96 are pending against the petitioner with regard to the country liquor 5 litres to 52 litres. Out of 9 cases 8 cases are said to be pending in the Court and the last case i.e. 115/96 the matter was under police investigation at the time when the detention order was passed. The Detaining Authority has recorded in view of these cases that the petitioner is engaged in antisocial activities. The reference has also been made to the latthakand which had happened in past showing the consequences of the consumption of country liquor, however, the petitioner is not concerned with this latthakand. The petitioner has been taken to be a bootlegger and the Detaining Authority has referred to the second incident i.e. 20.3.1996 and 24.3.1996 about which the witness has stated that the petitioner wanted to store the liquor at his house and when the witness declined, the petitioner got enraged, abused the witnesses, caught hold of him, brought him opposite Shahibaug and gave him public beating. The witness raised an alarm, crowd was gathered and the petitioner chased with sharp edged weapon chhuri and the crowd became scared and there was an atmosphere of terror. These allegations have been made with regard to the incident dated 20.3.1996. With regard to incident dated 24.3.1996, the witness had stated that while the petitioner was passing through Hemabijal-ni-chali Opposite Odehav CMC, the petitioner intercepted the witness because the witness protested against the petitioner's activities of selling unauthorised liquor in the area, the petitioner got enraged and publicly beaten the witness. The petitioner raised an alarm and therefore the crowd was collected. The petitioner came out with knife to assault the people. The crowd became scared and an atmosphere of terror was created and the routine life was disturbed. These statements were supported by the other two witnesses. The witnesses have requested that their identity may not be disclosed for reasons of their security and and that they are afraid and frightened of the petitioner. For these reasons the Detaining Authority detained the petitioner under section 9(2) of the PASA Act so as to keep their identity secret. The Detaining Authority has mentioned that the action under section 93 of the Prohibition Act was not required to be considered looking to the antisocial activities of the petitioner it was necessary

to detain the petitioner as the proceedings of his externment may also take long time. For these reasons the Detaining Authority was felt satisfied that the petitioner was required to be detained under Gujarat Prevention of Antisocial Activities Act, 1985 and accordingly the detention order was passed.

Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it can be certainly a case of breach of law and order.

Learned Addl. Public Prosecutor has supported the detention order orally.

I have considered the submissions made on behalf of both the sides. I need not give the reasons on which the detention order is challenged because I find that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed appears to be in full force to the facts of the given case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 30.3.1996 passed against the petitioner-detenu by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and it is directed that the petitioner-detenu is set at liberty forthwith if not required in any other case. Rule made absolute.
